

BENJAMIN J. FRICK
Claimant

CONCRETE & SUPPLY, INC.
Respondent

CASUALTY RECIPROCAL EXCHANGE

KANSAS WORKERS COMPENSATION FUND

ORDER

APPEARANCES

RECORD

The record consists of the transcript of the Regular Hearing dated February 25, 1994; the deposition of Ali B. Manguoglu, M.D. dated November 23, 1993; the deposition of Jeffrey E. Shumaker dated December 10, 1993; the deposition of Amy Lavelle Frick dated December 10, 1993; the deposition of Jeryl G. Fullen, M.D. dated January 17, 1994; the deposition of David A. Rettele dated March 8, 1994; the deposition of Steve Lolley dated March 17, 1994; the deposition of Lavelle Frick dated March 8, 1994; the deposition

of Benjamin Frick dated March 17, 1994; the deposition of Robert D. Seaton, M.D. dated April 14, 1994; the deposition of C. Reiff Brown, M.D. dated April 18, 1994; the deposition of Ely Bartal, M.D. dated May 16, 1994; the exhibits offered into evidence by the parties; and the pleadings and correspondence contained in the administrative file.

ISSUES

Because the Administrative Law Judge found that claimant failed to prove that his injury arose out of and in the course of his employment with the respondent, he did not make findings concerning the other issues raised by the parties. Were the Appeals Board to reverse the Administrative Law Judge on the issue of arising out of and in the course of employment, the matter would be remanded to the Administrative Law Judge for findings on the remaining issues. Accordingly, the sole issue presented to the Appeals Board for review is whether claimant has met his burden of proving accidental injury arising out of and in the course of his employment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds that claimant has not sustained his burden of proving that it is more probably true than not true that his injury arose out of and in the course of his employment with respondent.

Claimant is the owner and at times the sole employee of the respondent corporation. Claimant was injured on November 27, 1989 when lifting a box of copier paper. He felt a pop in his back and subsequently sought medical treatment. The evidence indicates that claimant was on the premises of the respondent's business at the time of his injury and suggests that the copier paper was owned by that business.

Claimant testified that he was moving the copier paper from the respondent company's office to another location at the request of his wife. His wife at times did perform services for the respondent business, as well as several of his other unrelated business enterprises. Claimant testified that he did not know the use to which his wife was putting the paper and conceded that it could have been for any number of his various businesses or for his or her personal use.

The Appeals Board agrees with the finding by the Administrative Law Judge wherein he states that, "[t]he fact that claimant was president of respondent and was injured at one of respondent's offices does not, in itself, mean that the injury arose out of and in the course of employment. In the face of respondent's denial that claimant's injury arose out of and in the course of employment, it was incumbent upon claimant to offer specific proof that claimant was carrying out the business of the corporation in retrieving the copier paper." The Appeals Board finds that the claimant has failed to meet his burden of proof in this regard and that the Award by the Administrative Law Judge denying this claim should therefore be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Special Administrative Law Judge William F. Morrissey dated February 23, 1995 should be, and hereby is, affirmed in all respects, and the orders contained in the Award are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Richard M. Blackwell, Salina, KS
Mickey W. Mosier, Salina, KS
Norman R. Kelly, Salina, KS
William F. Morrissey, Special Administrative Law Judge
David Shufelt, Acting Director